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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/529,798

10/28/2005

Luis F Angel

5660-01207

5366

35690

7590

06/17/2009

MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C.

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EXAMINER

YABUT, DIANE D

ART UNIT

PAPER NUMBER

3734

NOTIFICATION DATE

DELIVERY MODE

06/17/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/529,798	<b>Applicant(s)</b> ANGEL, LUIS F	
	<b>Examiner</b> DIANE YABUT	<b>Art Unit</b> 3734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2009 and 10 March 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 29,31,33,34,38,42,45,46,48-54,56,60 and 61 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 29,31,33,34,38,42,45,46,48-54,56,60 and 61 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>03/23/2009</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submissions filed on 01/28/2009 and 03/10/2009 have been entered.

### ***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on 03/23/2009. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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2. Claims 29, 42, 45-46, 48-51, 54, 56, and 60-61 are rejected under 35

U.S.C. 102(b) as being anticipated by **Heyn** (U.S. Patent No. **5,201,757**).

Claims 29, 50, 56, and 60-61: Heyn discloses a first conduit **44**, wherein at least a portion of an endoscope or bronchoscope, having at least a portion that is partially flexible, may be positionable in the first conduit during use, and wherein the first conduit is sized to allow an endoscope or bronchoscope to move through the first conduit, and a second conduit **20**, wherein at least a portion of the first conduit is positionable in the second conduit, wherein the second conduit is configured to contain at least a portion of a stent **18** between the distal ends of the first and second conduits, and wherein the second conduit is configurable to releasably position the stent in a body lumen or air passage during use (Figure 1, col. 5, lines 15-23). The distal end of the second conduit **20** is configured to expose at least a portion of the distal end of the stent **18** upon retraction (col. 6, lines 23-27).

Claim 42: Heyn discloses a stop **54** positioned approximate the distal end of the stent delivery system between the first and second conduits, wherein the stop is configured to inhibit movement of the stent in a proximal direction relative to the first conduit (Figure 1, col. 5, lines 55-58).

Claims 45-46: Heyn discloses at least a portion of the first and second conduits being partially flexible (col. 2, lines 31-35).

Claims 48-49: Heyn discloses at least a portion of the first and second conduits being configured to inhibit collapse of the first and second conduits upon removal of an endoscope during use (col. 5, line 63 to col. 6, line 5).

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Claim 51: Heyn discloses the stent comprising a pulmonary stent, as in is capable of being deployed into pulmonary artery (col. 5, lines 43-54).

Claim 54: Heyn discloses the second conduit comprising a polymer (col. 5, lines 15-18).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over

**Heyn** (U.S. Patent No. **5,201,757**) in view of **Bui** (U.S. Patent No. **6,629,981**).

Claim 31: Heyn discloses the claimed device except for a first lock configurable to inhibit movement of the first conduit relative to the second conduit during use, and a second lock configurable to inhibit movement of the endoscope relative to the first conduit during use.

Bui teaches a first lock **110** configurable to inhibit movement of a first conduit relative to a second conduit during use, and a second lock configurable to inhibit movement of the endoscope **124** relative to the first conduit during use (Figures 11, 15-17, and col. 9, lines 43-52 and col. 11, lines 8-19). It would have been obvious to one of ordinary skill in the art at the time of invention to provide a first lock and a second lock, as taught by Bui, to Heyn since it was known in the art that undesirable axial movement of coaxial conduits, or sleeves, results in difficult or undesirable deployment or lack of

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visibility, and therefore inhibiting movement between first and second conduits facilitates deployment of the stent.

5. Claims 33-34 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Heyn** (U.S. Patent No. **5,201,757**) in view of **Gunderson** (U.S. Patent No. **5,776,142**).

Claims 33-34: Heyn discloses the claimed device except for a lock configurable to inhibit movement of the first conduit relative to the second conduit during use, wherein the lock comprises a first grip coupled to at least a portion of the first conduit, and a second grip coupled to at least a portion of the second conduit, and one or more pins coupled to the first conduit, wherein at least one of the pins is configurable to inhibit portions of the first and second conduits from moving transversely to each other wherein at least a portion of the first grip is configurable to inhibit movement of the second grip in a direction toward a proximal end of the stent delivery system beyond the portion of the first grip.

Gunderson teaches a lock configurable to inhibit movement of the first conduit relative to the second conduit during use, wherein the lock comprises a first grip **20** coupled to at least a portion of the first conduit, and a second grip **30** coupled to at least a portion of the second conduit, and one or more pins **28** coupled to the first conduit, wherein at least one of the pins is configurable to inhibit portions of the first and second conduits from moving transversely to each other wherein at least a portion of the first grip is configurable to inhibit movement of the second grip in a direction toward a proximal end of the stent delivery system beyond the portion of the first grip (Figure 1,

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col. 5, lines 7-16). It would have been obvious to one of ordinary skill in the art at the time of invention to provide a lock to inhibit movement of the first conduit relative to the second conduit, as taught by Gunderson, to Heyn since it was known in the art that the movement of the first or inner conduit relative to the second or outer conduit should be controlled so that undesirable deployment or expansion of the stent may be prevented.

Claim 53: Heyn discloses the claimed device except for the first conduit comprising a polymer.

Gunderson teaches a first conduit comprising a polymer (col. 5, lines 43-48). It would have been obvious to one of ordinary skill in the art at the time of invention to provide a first conduit comprising a polymer, as taught by Gunderson, to Heyn since it was known in the art that polymer is a biocompatible, flexible material.

6. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over

**Heyn** (U.S. Patent No. **5,201,757**) in view of **Mikus** (U.S. Patent No. **6,093,194**).

Claim 38: Heyn discloses the claimed device except for a lock configurable to inhibit movement of the first conduit relative to the second conduit during use, wherein the lock comprises a clamp.

Mikus teaches a lock configurable to inhibit movement of a first conduit **70** relative to the second conduit **75** during use, wherein the lock comprises a clamp **77, 78** in order to prevent premature proximal displacement during insertion of the conduits into the body lumen (Figure 7, col. 7, lines 54-67 to col. 8, lines 1-8). It would have been obvious to one of ordinary skill in the art at the time of invention to provide a clamp lock,

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as taught by Mikus, to Heyn in order to prevent premature proximal displacement of the conduits during insertion into body lumen.

7. Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Heyn** (U.S. Patent No. **5,201,757**) in view of **Quiachon** (U.S. Pat. No. **5,938,623**).

Claim 52: Heyn discloses the claimed device except for the first conduit comprising a coiled spring.

Quiachon teaches a first conduit **42** comprising a coiled spring **61** (Figure 2). It would have been obvious to one of ordinary skill in the art at the time of invention to provide a coiled spring, as taught by Quiachon, to Heyn since it was known in the art that coiled springs used with conduits, sleeves, sheaths or catheters act as dampeners or absorb vibration along the length of a catheter.

### ***Response to Arguments***

8. Applicant's arguments filed 01/28/2009 have been fully considered but they are not persuasive.

9. Applicant generally argues that Heyn does not disclose a system in which the distal end of the second conduit is movable in a direction toward the proximal end of the first conduit to expose at least a portion of the distal end of the stent, but rather the second conduit **20** is retracted to expose a middle portion of stent **18**. However, a “distal end of the stent” may be designated as any portion of the stent distal to the proximalmost portion of the stent, even though Heyn discloses retracting the second



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conduit **20** "deploy the proximal portion of the stent **18**" (col. 6, lines 25-27), or what appears to be a "middle portion" of the stent, and therefore the system of Heyn still reads on this limitation. Heyn also discloses a "distal end" **24** of the second conduit and also a "distal end" **26** of the stent.

10. Applicant also argues that Heyn does not appear to disclose inhibiting the collapse of a first or second conduit. However, as maintained above, Heyn discloses in col. 5, line 63 to col. 6, line 5 that certain materials are selected for the sleeves or the conduits which may include a coating of Teflon, which might add rigidity to the conduits and therefore inhibit collapse.

11. In response to applicant's argument that Bui does not teach an endoscope that is locked to inhibit movement of the endoscope relative to a first conduit during use, since the endoscope **124** seems to be locked into place against the main body **102**.

However, it is not recited that the endoscope is locked directly against the first conduit, but only that the movement of the endoscope is inhibited relative to the first conduit, and therefore the lock of Bui reads on this limitation.

12. Next, applicant argues that the locks of Gunderson are configured to promote and not inhibit both longitudinal and rotational movement and does not disclose pins that are coupled to the first conduit, wherein at least one of the pins is configurable to inhibit portions of the first and second conduits from moving transversely to each other. Since As seen in Figure 1, Gunderson teaches pins **28**, or threading that has protrusions, which promotes movement when rotated, but also inhibits movement, just as a detachable or releasable lock functions. The pins **28** inhibit movement of a first

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grip **20** coupled to at least a portion of the first conduit relative to a second grip **30** coupled to at least a portion of the second conduit, and therefore Gunderson reads on this limitation.

13. Lastly, applicant argues that Mikus does not teach a clamp lock configurable to inhibit movement of the first conduit relative to the second conduit, and Quiachon does not appear to disclose a coil spring configured to inhibit collapse of the first conduit. However, as maintained above, Mikus teaches a lock configurable to inhibit movement of a first conduit **70** relative to the second conduit **75** during use, wherein the lock comprises a clamp **77, 78** in order to prevent premature proximal displacement during insertion of the conduits into the body lumen (Figure 7, col. 7, lines 54-67 to col. 8, lines 1-8). Quiachon teaches a first conduit **42** comprising a coiled spring **61** (Figure 2).

### ***Conclusion***

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DIANE YABUT whose telephone number is (571)272-6831. The examiner can normally be reached on M-F: 9AM-4PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on (571) 272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Diane Yabut/  
Examiner, Art Unit 3734

/Todd E Manahan/  
Supervisory Patent Examiner, Art Unit 3734